

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLN. NO. 10/550,890

REMARKS

Examiner Demerec issues the following three statutory prior art rejections:

- (1) Claims 1, 5 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Draghetti (WO '786).
- (2) Claims 2-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Draghetti; and
- (3) Claims 6-8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Draghetti in view of Focke '691.

Application respectfully **traverses** each of these rejection insofar as they may be applied to the new claims 11-17.

New claim 11 is a combination of canceled claims 1, 2, 3 and 4.

New claim 12 corresponds to canceled claim 5.

New claim 13 is a combination of canceled claims 6 and 7.

New claims 14-16 are based on the canceled claims 8-10.

New claim 17 essentially adds to claim 11 the additional feature "f".

I. The Invention

The main idea of the invention according to new claim 11 is the technical correspondence of the specific design of a pack with its contents, namely with a group of cigarettes. The design or square shape of the pack is defined by features a), b) and c). The group of cigarettes is arranged in a specific formation corresponding to the design of the pack. Specifically, in the

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region of the trapezoid-shaped cross sections of the pack, the two rows of cigarettes, namely the square rows 35 and 36 are fitted to the design of the pack. The formed dimensions of the pack and specifically the positioning and dimension of the legs 28, 29, 30, 31 are fitted to the positions of the rows 35, 36 in such a way that the rows 35 with two cigarettes contact the sidewalls 22, 23 on one hand, and the material strips 28, 29, 30, 31 on the other hand. The two cigarettes are positioned within the corners 37 of the pack.

Additionally, the cigarettes of the row 36 are positioned with respect to the pack in such a way that the outer cigarettes contact the strips 28, 29, 30, 31 on one hand and the front and rear walls of the pack on the other hand. Again, the two outer cigarettes of the row 36 are positioned within the angulations 38.

The technical result is on one hand the complete filling of the cigarette pack. There is an optimum of using the interior of the pack which is completely filled with cigarettes. The specific formation of the cigarettes is stabilized by positioning the main cigarettes within the angulations 37, 38, thereby preventing any side movement of these cigarettes as long as the group is complete.

A very important technical feature is, however, that the pack itself is stabilized by the formation of the cigarettes. Specifically, the square rows 35 and 36 are responsible for assisting to maintain the design of the pack which is normally not as stiff as a hinge lid pack in the standard version. The reason is that the angles between the walls of the pack are more than 90° which makes the pack less stiff. The positioning of the cigarettes, namely of the rows 35, 36, maintains the design of the pack.

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II. The Prior Art

1. The pack of Draghetti is of a very complicated design and i.e., not suitable for production on a packaging machine. Compared with the present pack according to new claim 11, the Draghetti pack has a lid 5 which is different in design from the lower part of the pack which is described as a "cup-shaped container 3". Additionally, the base part of the container 3 is again different from the central part of the pack.

Also compared with the pack according to the present invention, according to Fig. 4 of Draghetti, there is a very small compartment for the cigarettes (page 4, line 20: "*a compartment V for housing cigarettes 2*"). This "housing" is established by a collar or inner frame of the pack as shown in Fig. 1 and in Fig. 5. This inner frame and accordingly the compartment for cigarettes is completely outside the trapezoid shape of the side sections of the pack. Accordingly, none of the technical features described above in connection with the pack according to the present invention is achieved by the Draghetti pack. Additionally, the pack according to the present invention may be produced on industrial packaging machines. In fact this pack is being produced at least in Canada for the cigarette market.

2. The pack according to Focke '691 (assigned to the assignee of the present application) has a completely different design of the side areas. However, this is a typical hinge lid pack with the same square design of lower pack part and lid. The beveled edges 35 (or the rounded edges according to Fig. 8 of Focke) are designed to fit with the dimension (diameter) of a cigarette. However, rounded edges are general state of the art in the design of hinge lid packs.

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The rejection based on anticipation by Draghetti requires that Draghetti disclose, either expressly or inherently, each limitation of each of the claims, or in other words, that each of claims 11-17 be readable on Draghetti. Applicant respectfully submits that clearly such is not the case here.

In this regard, Applicant has pointed out the limitations in claims 11 and 17 which are not taught or even suggested by Draghetti.

Since the rejections under 35 U.S.C. § 103(a) require that the cited reference(s) disclose, or at least suggest, **all of the limitations**, of each rejected claim, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 103(a). In this regard, Applicant has described the deficiencies in Draghetti and Focke. Thus, even if Draghetti were modified by Focke as proposed by the Examiner, there would not be produced the subject matter of any of the new claims 11-17 or subject matter which would have rendered these claims obvious.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections under 35 U.S.C. § 102(b) and 103(a), and to find the application to be in condition for allowance with claims 11-17; however, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Applicant files concurrently herewith a Petition (with fee) for an Extension of Time of two months. Applicant hereby petitions for any extension of time which may be required to

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maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

/John H. Mion/
John H. Mion
Registration No. 18,879

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3213
(202) 663-7901

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